

GRAYS HARBOR COUNTY ORDINANCE NO. 403

AN ORDINANCE AMENDING THE GRAYS HARBOR COUNTY CODE
TO ADD A NEW CHAPTER TO TITLE 8 OF THE GRAYS HARBOR
COUNTY CODE REGARDING RIGHT TO FARM AND PRACTICE
FORESTRY

Whereas, farming is a major industry and a major economic factor in Grays Harbor County and the State of Washington; and

Whereas, a need exists to continue farming, agricultural activities, and farm operations in accordance with generally accepted management practices; and

Whereas, forestry is a major industry and a major economic factor in Grays Harbor County and the State of Washington; and

Whereas, a need exists to continue forestry and forest operations in accordance with accepted management practices; and

Whereas aquaculture is a major industry and a major economic factor in Grays Harbor County and the State of Washington; and

Whereas a need exists to continue aquaculture activities, and aquaculture operations in accordance with accepted management practices; and

Whereas, farming, forestry, and aquaculture are a part of Grays Harbor County's customs and culture; and

Whereas, agricultural, forestry, and aquaculture activities conducted on farmland, forestland and in the waters are subjected to nuisance lawsuits, and that such suits encourage and often force the premature removal of the lands or waters from agricultural uses, timber production, and aquaculture uses now,

Therefore, it is hereby resolved that the Board of Commissioners of Grays Harbor County adopt the following "Right to Farm and Practice Forestry" ordinance.

Right to Farm and Practice Forestry

Sections:

- xx.xx.005 Short title.
- xx.xx.010 Policy and purposes.
- xx.xx.020 Definitions.
- xx.xx.030 Nuisance.
- xx.xx.040 Disclosure.
- xx.xx.050 Severability.

xx.xx.005 Short title.

This chapter shall be known and cited as the “Right to Farm and Practice Forestry” ordinance.

xx.xx.010 Policy and purposes.

It is the declared policy of Grays Harbor County to protect, enhance and encourage agricultural, forestry, and aquaculture activities within the County. It is the purpose of this chapter to provide that agricultural, forestry, and aquaculture activities conducted on agriculture and forestlands, and in the waters as defined in this code, be protected from nuisance lawsuits in accordance with RCW 7.48.305.

- (1) Where non-agricultural, non-forestry, and non-aquaculture activities and uses extend into agricultural, forestry, and aquaculture activities areas or exist side-by-side, agricultural, forestry, and aquaculture activities are frequently the subjects of nuisance complaints and on occasion, in other areas, have been forced to cease or curtail operations. Such nuisance complaints discourage investments in agricultural, forestland, and aquaculture improvements to the detriment of adjacent agricultural, forestland and aquaculture uses and the economic viability of the county’s resource industry as a whole. It is the purpose and intent of this chapter to reduce the loss of its agricultural, forestlands, and aquaculture, by limiting and defining the circumstances under which agricultural, forestry, and aquaculture activities may be considered a nuisance. This chapter is not to be construed in any way as modifying or abridging county, state or federal laws; rather it is only to be utilized in the interpretation and enforcement of the provisions of this code and county regulations.
- (2) An additional purpose of this chapter is to promote a good neighbor policy by advising purchasers and users of property near agricultural, forest, and aquaculture areas of the inherent potential conditions of activities associated with such areas including, but not limited to, the use of chemicals, areas of spraying, pruning, harvesting and planting activities, which occasionally generates traffic, dust, smoke, noise, odor and, regardless of the hours of operation, that

may accompany agricultural, forest, and aquaculture land management operations.

- (3) An additional purpose of this chapter is to provide notice, through a disclosure statement of potential incompatibilities, inconveniences and conditions that may arise from agricultural, forestry, and aquaculture activities.

xx.xx.020 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter the most reasonable application.

- (1) "Agriculture" is including but not limited to the following: tilling of soil, raising of crops, horticulture, viticulture, floriculture, aquaculture including shellfish harvesting, small livestock farming, dairying, and animal husbandry.
- (2) "Agricultural activity" means a condition or activity which occurs in connection with the commercial production of agriculture and timber products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including but not limited to use of current county roads and ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways and similar features and maintenance of stream banks and watercourses; and conversion from one agricultural activity to another, including a change in the type of crop produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.
- (3) "Aquaculture" is the rearing of fish, shellfish, and aquatic plants.
- (4) "Farm" means the land, waters, buildings, manure lagoons, ponds, culturing and growing facilities, and machinery used in commercial production of farm products.
- (5) "Farmland" means land and waters devoted primarily to the production, for commercial purposes, of livestock, aquaculture or other agricultural commodities.

- (6) "Farm product" means those plants and animals (and the products thereof) useful to human beings which are produced on farms and include, but are not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, nursery products, trees and forest products including Christmas trees and timber, fresh and saltwater aquaculture and aquaculture products, rabbits, apiaries, equine and similar products, or any other food, feed, fiber or fur product.
- (7) "Forestland" means all land, which is capable of supporting a merchantable stand of timber and is not actively being used for a use, which is incompatible with timber growing.
- (8) "Forest practice" means any activity conducted on or directly pertaining to forestland as that term is defined in RCW 76.09.020 and related to growing harvesting or processing timber. The term "forest activity" includes, but is not limited to, road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, crop protection, salvage of trees, brush control, regardless of the frequency of the activity.
- (9) "Generally accepted management practices" or "best management practices" means sound, economically feasible agriculture, forestry, and aquaculture techniques and practices.

xx.xx.030 Nuisances.

No agricultural, forestry, or aquaculture activity, machinery, facility or appurtenances thereof shall be considered or become a nuisance as defined in the Grays Harbor County Code, regardless of past or future changes in the surrounding area's land use or zoning designation, when conducted or maintained for commercial purposes, and in a manner consistent with generally accepted and best management practices, and where activities may lawfully occur, not superseding local, state or federal regulations:

- (1) Notwithstanding any other provision in this chapter, agricultural, forestry, and aquaculture activities, if consistent with good and generally accepted agricultural, forest, and aquaculture management practices established prior to surrounding activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.
- (2) If that agricultural or aquaculture activity or forest practice is undertaken in conformity with generally accepted management practices, it is presumed to be good practice and not adversely affecting the public health and safety.

- (3) An agricultural, forest, or aquaculture operation shall not be restricted in its activities as to time of day or days of the week, but shall be conducted according to generally accepted management practices.

xx.xx.040 Disclosure.

1. **The statement set forth** in subsection (2) of this section shall be used under the following circumstances and in the following manners:
 - a. Grays Harbor County shall, through the Planning and Building Department, provide a copy of this Ordinance upon request.
 - b. Grays Harbor County adopts and endorses the position:
 - i. To the maximum extent possible, prior to transfer, option, or lease of real property, to deliver a disclosure statement contained in subsection (2) below or a copy of this Right to Farm and Practice Forestry Ordinance to the transferee. This is to be achieved by cooperation between the county, the real estate trade association, agriculture, forestry and aquaculture associations, by voluntary means and written agreement.
2. The following shall constitute the Disclosure recommended by this section:

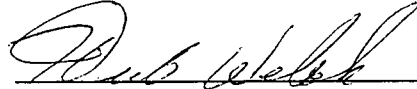
“In addition to the Washington Right to Farm Act RCW 7.48.300-320 or as herein modified, Grays Harbor County maintains a right to farm and to practice forestry and aquaculture. Citizens and their properties may be subject to conditions arising from such operations, including, but not limited to, odors, flies, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), animals, the storage and transport and disposal of manure as well as traffic, light, noise, mud, changes in appearances of properties, and the application by spraying or otherwise of chemical fertilizers, soil amendments, and pesticides. Grays Harbor County has determined that the use of real property for agricultural, forest and aquaculture operations is a high priority and protected use in the County. Those conditions arising from agricultural, forest and aquaculture operations, if such operations are consistent with commonly accepted good management practices shall not be considered a nuisance unless the activity or practice has a substantial adverse effect on public health and safety.

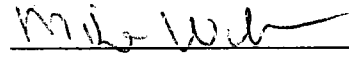
xx.xx.050 Severability.

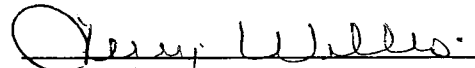
If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a Court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.

APPROVED AND ADOPTED this 31st day of December, 2012.


BOARD OF COMMISSIONERS ...
GRAYS HARBOR COUNTY


Herb Welch, Chair, Commissioner
District 3


Mike Wilson, Commissioner
District 2

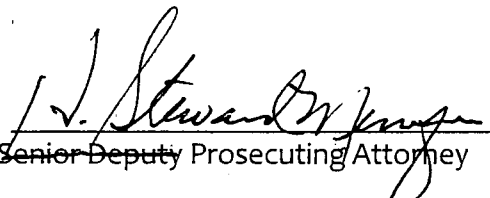

Terry Willis, Commissioner
District 1

ATTEST:


Donna McCallum
Clerk of the Board

APPROVED AS TO FORM:

H. STEWARD MENEFEE
PROSECUTING ATTORNEY

By: 
Senior Deputy Prosecuting Attorney